2125 9

Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

Writer's Direct Dial Number

Direct Dial Number:
(757) 629-2759
fax (757) 533-4872

James R. Paschall
General Attorney

November 12, 2004

via fax (202) 565-9004
and Airborne Express

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Docket No. AB-290 (Sub-No. 252X), Norfolk Southern Railway Company - Abandonment Exemption - Between Burkeville, VA and Pamplin City, VA - In Nottoway, Prince Edward, Cumberland and Appomattox Counties, Virginia - Petition for Exemption

Dear Mr. Williams:

I am providing this letter to the Board via fax, e-mailing a copy to Mr. Thomas F. McFarland, attorney for SMI Rebar, and mailing copies to him and those on our service list. I am sending an original and 10 copies to the Board via Airborne Express.

On September 30, 2004, Norfolk Southern Railway Company (NSR) filed with the Board in the subject docket a petition for exemption to abandon an approximately 33.8-mile line of railroad between Milepost N-134.10 near Burkeville, VA and Milepost N-167.90 near Pamplin City, VA, via Farmville, VA (the "Line"). NSR intends to negotiate an interim trail use agreement with the Virginia Department of Conservation and Recreation with respect to this Line. VA DCR is eager to proceed with this project.

On November 9, 2004, SMI Rebar - Farmville, a unit of CMC Steel Group, a division of the Commercial Metals Company ("SMI")[1], a shipper of 136 of the 158

[1]In view of statements made by SMI about its size and finances compared to NSR's, it is important to identify SMI. According to information readily available on the

annual carloads of local traffic that moved over the line in the petition's base year, filed a statement in opposition to the petition. That statement sought only to have the petition denied on the basis that it was technically inadequate, but did not show or even tend to show that the Line could be operated profitably. SMI filed a further letter on November 10, 2004 to note a Board decision just served. SMI's statement does not achieve its objectives, but makes errors or incomplete statements that must be corrected or clarified in order for fair consideration to be given to NSR's petition.

In its discretion, the Board has construed its rules liberally to permit petitioners to respond to opposition statements when the response addresses points raised by the opposing party, does not seek to introduce new evidence, helps to clarify the record or the arguments, identifies important errors or mis-statements in the opposing statement, and is submitted soon after the opposing statement is filed so that the Board's handling of the proceeding will not be unduly delayed or hindered.[2] Such a limited and timely

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internet, Commercial Metals Company, of which the SMI plant is a unit, operates four steel minimills, 30 steel fabrication plants (including the one at Farmville, VA), 28 concrete products warehouses, runs a heat-treating plant, 6 plants that produce special sections for floors and ceiling support, 4 plants that produce steel fence posts, 1 plant that treats steel with heat to strengthen and provide flexibility, 1 plant that rebuilds railcars, a railroad salvage company, a subsidiary that manufactures copper tubing and a recycling unit that operates more than 34 secondary metals-processing plants. It even has a plant in Poland. CMC reported annual sales of $4.8 billion, net income of $132 million and earnings of $4.42 per diluted share in the year ending August 31, 2004. http://www.hoovers.com/commercial-metals/--ID__10374. See also page five of Commercial Metals Form 10K Report filed with the Securities and Exchange Commission on November 24, 2003, also publicly available on the internet. By contrast, as can be confirmed from press releases on NSR's web site, NSR's earnings per diluted share were $2.06 for the similar period consisting of the fourth quarter 2003 and first three quarters of 2004, less if accounting charges are considered.

It seems somewhat disingenuous for a unit of a company with $4.8 billion in annual revenue and making over double the earnings per share of NSR to imply that it is a small operation that will suffer great harm in comparison to a big railroad that will not be harmed much if it continues to lose money by subsidizing the shipper's transportation costs. NSR identified SMI as a unit of Commercial Metals Company in its petition. In view of CMC's size and financial results, suggestions about unspecified additional shipping costs that it might incur as a result of the abandonment of the Line add nothing to SMI's argument, even if they were more detailed and a proper consideration. We do not think that taking notice of publicly available information about SMI that reflects on its statements can be considered new evidence or unfair.

[2]This letter is submitted only three days after SMI's statement, two days after its letter, and with a federal holiday being one of the intervening days.

response permits the opposing party an opportunity to promptly address points raised in the response if it chooses, again without unduly affecting the processing of the proceeding. This letter meets those criteria and will assist the Board in reaching a just determination of the issues on the most complete and accurate possible record. The Board has accepted responses of this type even without a formal request or motion to do so. Nonetheless, NSR hereby formally requests that the Board exercise its discretion to accept into the record and to consider this letter in response to SMI's opposition statement and its further letter in this matter in order to correct and complete the record.[3]

In this letter NSR shows:

(1) SMI is part of a large, profitable company, identified in the petition, which refutes its unsupported argument that it will bear a greater burden from unspecified higher shipping costs than NSR would bear from continuing losses to maintain service on the Line;

(2) the decisions cited by SMI differ significantly from this case, usually in several key respects;

(3) SMI's statement does not support its requested relief because (a) strenuous opposition requires more than a statement by one party that the petition may contain errors or lack of support, especially when only a few such alleged errors are specified in detail and both of the key examples are incorrect and (b) even if several changes were made in NSR's revenues and costs, it is clear that NSR would suffer large avoidable and economic losses if it continued to maintain and operate the Line, so that the revenues from the Line's operation cannot be characterized as "marginal" in comparison to or (or even close to) NSR's avoidable and economic costs;

(4) SMI makes a large error in characterizing an NSR total segment or line cost for ditching as a "per mile" cost, thereby unfairly portraying NSR's evidence as wildly suspect;

(5) NSR adequately supports its bridge maintenance and rehabilitation costs and even if these costs were eliminated from the evidence entirely, NSR still would suffer a large avoidable and economic loss on the continued operation of the subject Line;

(6) NSR does not double count the High Bridge rehabilitation costs and in fact states the maintenance and rehabilitation costs conservatively;

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[3]Precedent for such responses includes *Union Pacific Railroad Company -- Abandonment Exemption -- in Rio Grande and Mineral Counties, CO*, STB Docket No. AB-33 (Sub-No. 132X)(STB served June 22, 2004); *CSX Transportation, Inc. -- Abandonment Exemption -- (Between Memphis and Cordova) in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 590X)(STB served Dec. 12, 2001), one of the cases cited by SMI; *Buffalo & Pittsburgh Railroad, Inc. -- Abandonment Exemption -- In Erie and Cattaraugus Counties, NY*, STB Docket No. AB-369 (Sub-No. 3X)(STB served Sept. 18, 1998); *Tulare Valley Railroad Co.--Abandonment and Disc. Ex.--In Tulare and Kern Counties, CA*, STB Docket No. AB-397 (Sub-No. 5X) (STB served Feb. 21, 1997) and several other recent cases.

(7) NSR does not need to rely on, and in fact has not relied largely on, the High Bridge rehabilitation and maintenance costs to support its petition (although those costs do add support), indeed if only the segment of the Line with no such bridge costs were kept in operation, as shown in our exhibits, it would still be very unprofitable;

(8) NSR's cost evidence is adequately supported and in line with Board requirements and evidence (both in form and amount) in similar cases; and

(9) NSR adequately anticipated and addressed all possible, credible opposition arguments in the petition. This is not the close case that SMI argues it to be.

From publicly available information, we show in footnote one that SMI's suggestions or implications about its company's size and profitability are incomplete, at best, and that its argument about suffering serious, but unspecified, financial harm from higher shipping costs in contrast to the losses to NSR if NSR were to continue serving it at a loss, lacks support. No reliance should be placed on SMI's characterization when publicly available facts, and information in the petition concerning specialized truckers available to transport its materials, sharply contrast with its prediction of dire financial consequences if it cannot receive direct rail service for less than 3 carloads of material per week and its company's earnings per share are more than double NSR's earnings.

SMI's legal theory is that the petition should be dismissed because it is "strenuously opposed" and that "it is not evident from the petition that the rail line revenues are marginal in comparison to the costs of operating the line." Even if this theory were applicable in an appropriate case, neither criteria is met under the facts of this case as presented and there are considerable differences between the cases cited and this one. SMI's argument, which is undermined by errors, and relies in large part on unsupported and vague suggestions of errors in NSR's petition, cannot bring this case within the ambit of the cases it cites. An example of SMI's prejudicial presentation is an SMI statement about a supposedly suspect NSR "per mile" ditching cost that SMI prominently uses in an effort to shed doubt on NSR's cost, but which actually is a total cost figure for ditching for the line or for either segment, not a "per mile" cost. Indeed, a much lower "per mile" maintenance cost is shown on the very page that SMI submits for both the item at issue and the total amount of maintenance costs per mile.

SMI's sole opposition to the petition, no matter how vigorously presented, is not the type of "strenuous opposition" described in the oldest decision apparently to use that term, the first decision cited by SMI, or by the eight additional prior STB and ICC decisions cited by SMI in which it was applied.[4] In the cases cited by SMI (with one noted exception), multiple parties opposed petitions to abandon lines often much shorter than the subject Line or either segment of it. The opponents often submitted detailed rebuttal evidence when the petitioner presented cost evidence. In most cases,

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[4]SMI has ten citations in its statement but two are properly identified as simply further decisions in one of the other eight cases. The ninth is a recent decision that was the subject of SMI's November 10 letter.

the petitioner's evidence was grossly deficient or incomplete or did not consider plausible partial abandonment scenarios when they arguably should have been considered. The primary opponents did not just suggest a few minor errors (incorrectly) and raise vague doubts about the basis for a few cost items.

In the first case cited by SMI for the "strenuous opposition" point, a decision in which the ICC denied the petition by a 3 to 2 vote, at least 13 parties opposed the petition in joint or individual statements or letters. Among the other cases, seven parties, including three shippers, filed comments and protests with respect to the abandonment of a 9.5-mile line in the second one[5]; seven parties protested in the third; and fifteen parties, including seven shippers, jointly or individually protested or commented in opposition in the seventh. Four shippers protested the BN petition to abandon a line only 2.38 miles long in the "Cook County" case cited by SMI. At least some of these protests or comments provided specific and detailed cost information in rebuttal to the petition.

The cited decisions involve a series of cases where the revenue from the traffic on the line to be abandoned was much closer to covering the avoidable costs and economic losses of the railroad's operation of the line, and the petitions were almost always abbreviated and materially insufficient. In a few of the cases, such as the one that was the subject of SMI's November 10 letter, the petitioner apparently presented no revenue and cost evidence at all. NSR's petition does not contain such gross deficiencies and has addressed the two possible partial abandonment scenarios for the subject Line as well as possible arguments that could be raised by an opponent of the petition.

An example of the gross deficiencies in the cited case is the BN "*Cook County*" case where the petitioner presented cost and revenue evidence for a 10-month "base year" and no forecast year evidence at all.[6] In the *San Joaquin* case, the petitioner had

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[5]After that decision, B&M again filed for the abandonment and in *Boston and Maine Corporation -- Abandonment -- In Hartford and New Haven Counties, CT; Springfield Terminal Railway Company -- Discontinuance of Service -- In Hartford and New Haven Counties, CT*, STB Docket No. AB-32 (Sub-No. 83), STB Docket No. AB-355 (Sub-No. 23)(STB served April 22, 1998), the Board authorized the abandonment.

[6]Unlike in many of the other cases cited by SMI, BN did not solve its problem with this line by filing a subsequent successful abandonment case, but by leasing the line to a lower cost short line railroad that was operating nearby. *Central Illinois Railroad Company - Lease and Operation Exemption - Lines of the Burlington Northern and Santa Fe Railway Company at Chicago, Cook County, IL*, STB Finance Docket No. 33960)(STB served September 12, 2002). Clearly, neither the location of the subject Line nor the amount of traffic on it would support a short line operation in this case. A

"not provided a breakdown of operating revenues and costs (with supporting detail)." The *Gauley River* case was unusual, the line was not in service, but the petitioner had some rental income and had not clearly shown any costs. Upon reopening the case, the Board granted the exemption.[7] In the *Tulare Valley* case, the Board permitted abandonment of 18.5 miles of line but denied the petition with respect to 5.9 miles of line needed to serve a shipper that had made a showing sufficient to raise doubt about whether that shorter segment could be profitably served. In the last case, the CSXT *Memphis* discontinuance case, CSXT declined to present evidence for the two possible segments of the line at issue in the initial case, but succeeded in receiving approval to discontinue service over both segments when it presented the case in two dockets soon after the cited decision was served.[8] NSR has provided complete and detailed base year and forecast year revenue and cost evidence for the entire line and for the only two plausible partial abandonment scenarios, supported by detailed footnotes and work papers.

Even if the cited cases stand for the broad proposition that SMI suggests, SMI does not and cannot establish that NSR's revenues are "marginal in comparison to the costs of operating the line" in this case nor can SMI raise enough doubt about NSR's revenue and cost presentation to plausibly support its claim that NSR's petition does not clearly and overwhelmingly show that NSR suffers substantial avoidable and economic losses from the continued maintenance and operation of the Line. These losses which are large without considering necessary bridge rehabilitation for the High Bridge will only increase when the large costs for such work are taken into account. Even if substantial adjustments were made in NSR's presentation, and SMI does not show they are necessary, the plain fact of the matter is that the revenues from the

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similar change of control resolution occurred in another case cited by SMI when RailTex, Inc. acquired the Central Railroad Company of Indiana. *Central Railroad Company of Indiana -- Abandonment Exemption -- In Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN*, STB Docket No. AB-459 (Sub-No. 2X)(STB served Nov. 1998).

[7]Upon sufficient explanation of the circumstances by the petitioners in a petition to reopen, the Board granted the exemption. *Gauley River Railroad, LLC -- Abandonment And Discontinuance of Service -- in Webster And Nicholas Counties, WV*, STB Docket No. AB-559 (Sub-No. 1X); *CSX Transportation, Inc. -- Discontinuance of Service -- Webster and Nicholas Counties, WV*, STB Docket No. AB-55 (Sub-No. 572X)(STB served June 23, 2000).

[8]*CSX Transportation, Inc. - Discontinuance Exemption - (Between East of Memphis and Cordova) in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 615X)(STB served July 17, 2002) and *CSX Transportation, Inc. – Discontinuance – At Memphis, In Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 618)(STB served Oct. 28, 2002).

traffic on the Line cannot cover NSR's avoidable and economic losses, including significant opportunity costs. NSR's petition satisfactorily demonstrates that this is not a questionable or marginal case. SMI does not present a contrary showing, but for the most part merely raises questions about insufficient support for some of the details. Those questions are largely and satisfactorily answered by footnotes to the cost summaries and other work papers in the petition and by a careful examination of the information NSR submitted.

SMI's statement contains a serious error that undermines its suggestion that NSR costs must be drastically overstated. SMI makes much of what it supposes to be a $27,000 per mile ditching cost for maintenance of the Burkeville-Farmville segment of the Line. In fact, this was the total ditching cost for the 15-mile line segment from which the example is drawn. The left hand column of the sheet from NSR's petition that was attached to the opposition statement shows that the ditching cost was "$599 per mile," which our cost engineer rounded up to $600 and multiplied by 3 to get the total cost for a 15-mile segment and a summary at the bottom of the page notes that the average normalized maintenance cost per mile for the ten-year period for the subject segment is forecast at $9,902 per mile.[9] The correction of SMI's gross overstatement, even if the actually stated ditching costs are reduced for the purposes of evaluating the petition, removes from consideration the only specific error or apparently exaggerated cost from consideration in evaluating NSR's petition and in finding that NSR's losses with respect to the Line are large and sufficiently proven.[10]

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[9]We must acknowledge that our cost engineer did not give the reason for the multiplication in the work papers and that with our inability to introduce new evidence or explain whether "ditching" includes other items in view of the low normalized maintenance costs per mile when bridge rehabilitation costs are not considered, our ditching costs must be considered to be one-third of the amount stated in the three exhibits. While we regret the omission, the reduction of our overall costs as a result of any adjustment to these costs is insignificant considering the large avoidable and economic losses of maintaining and operating this Line that are otherwise shown in the petition and would not affect the conclusion that the Line is operated at a large loss.

[10]We are quite certain that SMI's error is simply an error, although it is somewhat puzzling since the cost per mile for ditching is stated in the left column and the total average cost per mile for the 10-year period is stated at the bottom of the page. Our criticism cannot be too vigorous in view of our omission of an explanation for multiplying the $599 per mile cost for ditching by 3. But although quite by chance, it seems, SMI has uncovered what we believe is the only notable omission or mathematical error in our costs, it is not near the magnitude that SMI suggests based on its error in using a total cost as a per mile cost. Even with an adjustment of this cost item to $599 per mile from $1,800, NSR's overall avoidable loss is huge. There is no indication here that the cost figures can be changed to the extent required for the revenues from the line to cover the avoidable and economic losses of its maintenance and operation. It would be

SMI argues that most of NSR's case is based on the cost of rehabilitating the High Bridge and that this cost is unsupported. This is not only erroneous and a serious overstatement of NSR's presentation and use of the bridge rehabilitation costs, but even if NSR had no bridge rehabilitation or bridge maintenance costs at all for the Line, NSR would still suffer large avoidable and economic losses, including opportunity costs, to maintain and operate it. Moreover, it is simply not reasonable to assume that NSR would operate trains destined only to Farmville by the longer route over Pamplin City as we stated we were doing in the petition, to avoid use of the High Bridge if that bridge did not need immediate significant rehabilitation and maintenance. It is well recognized, including in the CSXT *Memphis* case cited by SMI, that any bridge that is well over 90 years old will need substantial rehabilitation and maintenance to remain in service. Here, any quibbling over a few thousand dollars would not change the result that the Line is operated at a large avoidable and economic loss, because as noted, even with no bridge costs included in the calculation at all, revenue from operations over the Line could not come close to making operation of the Line profitable.

As the bridge list attached to the historical report and attached to this letter shows, there are several bridges and structures that need to be maintained along this Line in addition to the High Bridge. NSR included no special or substantial bridge rehabilitation costs in the ten year maintenance cost forecast for any of them, even though it should be clear that some of them will require routine, if not some extra, work during that time period. This is one of several conservative or understated points in the petition that would not help SMI's argument if we addressed them in detail and show that the petition is clearly justified.

SMI is wrong in arguing that NSR's characterization of bridge rehabilitation costs as normalized maintenance over a 10-year period skews the costs radically in the forecast year. In fact, the approach taken by NSR dramatically understates the forecast year costs since NSR did not include the bridge rehabilitation cost in its entirety as a single item amount in calculating the forecast year costs as the circumstances in fact justify. It is thus a gross and prejudicial mischaracterization of NSR's evidence to the contrary when it is plainly obvious that the avoidable loss for the forecast year would exceed or approach $1 million for the entire Line and Burkeville-Farmville retention scenarios if the High Bridge rehabilitation cost had been included in its entirety in forecast year avoidable costs. Opponents of railroad line abandonments usually prefer the 10-year amortization approach to the railroad seeking to recover such costs immediately in the year they are incurred, but the Board has recognized that especially in the absence of traffic or cost recovery guarantees, it is appropriate to consider such

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seriously prejudicial to NSR for this large error and the prominent argument SMI based on it to stand uncorrected or unrebutted as possible support for denying the petition and requiring refiling.

costs as being incurred in their entirety in the year when the work is required.[11] Therefore, if anything, NSR states the forecast year costs for the entire Line and the Burkeville-Farmville segment too conservatively and in fact skews them significantly against NSR by amortizing them over ten years when there is no guarantee they can be recovered at all and they could have all been included in forecast year costs.

A recap of significant cost/revenue figures from the petition would be useful to keep perspective in this matter. After accounting for a small increase in revenue, NSR forecasts gross revenue from the operation of the Line in the forecast year at $172,698 while the avoidable loss from operations of the entire Line would be $228,511, with similar losses of $139,884 for the Burkeville-Farmville segment alone and $89,479 for the Farmville-Pamplin City segment alone. The avoidable loss from operations, including return on value, of the entire Line would be $372,964, with similar losses for the Burkeville-Farmville segment alone of $204,137 and for the Farmville-Pamplin City segment alone of $169,705. But this is not the full economic loss to NSR from continued operation of the Line because NSR would suffer an annual opportunity cost of $290,519 for the entire Line, or $128,111 for the Burkeville-Farmville segment, or $161,550 for the Farmville-Pamplin City segment based just on the value of the track and materials on the Line without even calculating or including the value of the land in the cost. This is not a close or marginal case.

Note, as presented in the petition, that operation of the service to Farmville by

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[11]We think the petition was sufficiently clear in stating that the total High Bridge rehabilitation costs in fact would be incurred in the forecast year and it would be fair to include the entire cost, but that these costs would be in addition to the costs stated in the cost evidence. In fact, to include these costs entirely in the forecast year without double counting, we would subtract the $79,650 annual amortized cost (based on an earlier estimate of material costs) from the calculation of costs in the forecast and future years. However, it clearly would not benefit SMI's case for us to subtract $79,600 from the bridge renewal costs over the forecast year and for the future years in the 10-year period when the reason for the subtraction would be to add the whole amount (actually now $871,200) under a more recent estimate to the forecast year costs. NSR did not double count the bridge renewal or rehabilitation costs. These costs were calculated conservatively and amortized when they should have been included entirely in the forecast year. We may not have been detailed enough in not referring to a subtraction of an amortized amount in the regular cost items that would result in adding only a net amount of $791,600 rather than $871,200 to avoidable costs but this still results in an extremely large additional net cost in the forecast year and does not affect our point that the forecast year costs, and avoidable losses, are very conservatively stated. More detail would not change the large overall avoidable loss to a small one or a profit. It is perhaps ironic that sharp and rapid increases in the prices of steel products contribute significantly to the need to increase estimated costs to rehabilitate the High Bridge over estimates that are not much older.

the longer route over Pamplin City from Crewe that does not use the High Bridge still results in large avoidable and economic losses, including opportunity costs, to NSR.

SMI generally attacks NSR's costs as unsupported allegations, but this statement in fact lacks support. The costs clearly are prepared in the format, according to the methodology and using the accounts prescribed by the Board. The cost items are supported by numerous footnotes, explanations and work papers. The departments that provided the accounts or records are shown in those work papers. The special verification for the cost evidence affirms that the evidence was prepared from company records and accounts. SMI appears to be suggesting that every item be accompanied by a verification by the person that keeps the account or by some sort of detail far in excess of the Board's requirements even in application proceedings. There is sufficient support and detail in NSR's footnotes and the work papers for NSR's costs.

On the very page from NSR's exhibits that SMI presents, NSR shows an average normalized maintenance cost of $9,902 per mile over the 10-year period. This is quite reasonable and in line with similar costs that the Board has accepted in recent cases. It certainly is difficult to argue that this per-mile average maintenance estimate is out of line when $5,310 is for the program bridge work, which if excluded, would be only because all such costs for the next ten years would be included in the forecast year costs. It also includes $1,200 for ditching costs that are valid but that we acknowledge are not explained in the petition. Then, the total would be only $3,392 per mile for normalized maintenance costs. In fact, the average per mile maintenance cost for the Farmville-Pamplin City segment shown on page 121 of NSR's petition is $3,761 per mile for a segment without the High Bridge, and indeed, without any stated bridge work at all. The subtraction of the "extra" ditching costs and all costs of bridge work, an implausibility in any event, by no means would bring the actual or potential revenues from the operation of the line close to covering NSR's avoidable and economic costs. These are well within, indeed lower than, costs the Board has reviewed and accepted for normalized maintenance in similar cases.

While SMI complains about consideration of the cost/revenue evidence in an accelerated informal procedure, SMI would have exactly the same amount of time to respond to NSR's evidence in an abandonment application proceeding as it would in this exemption proceeding. Moreover, since NSR has tried to work with SMI with respect to alternative transportation arrangements, as noted in the petition, and since this Line has been listed on NSR's system diagram map, SMI knew this petition would be filed and could have prepared a more comprehensive statement and an alternate cost presentation by the date of its opposition statement, if in fact SMI could reasonably show the Line could be operated profitably or that NSR arguably could not prove its case. SMI will not be denied any procedural due process if the Board grants the exemption on the well-supported record in this case. SMI has taken the risk of this result by not submitting a more comprehensive case or a more accurate one as to the cost items it challenged in detail. On the other hand, NSR will continue to suffer avoidable losses and opportunity costs as it operates the Line nearly for SMI's sole benefit. DCR will be delayed in its trail use negotiations and almost certain conversion of the right-of-way to trail use. All this merely for NSR to return to the Board in a few months with a few more details that show the losses are as great or greater than those shown in the subject petition.

SMI's promises of future traffic increases and working with NSR to increase revenues and to receive their products from origins that would give NSR longer hauls are speculative at best and are entitled to little weight. The current peak demand for steel products suggests that traffic is more likely to drop back to earlier levels than to increase further in the future. Moreover, it is obvious that the addition of a few more carloads of traffic per month over the Line, if even possible, would be grossly inadequate to make the operation of the Line profitable. As the petition states, NSR has already worked with SMI and the other customer on the Line on cost savings and other ways to improve the revenue to cost ratio of serving the Line. These efforts have failed because the costs so greatly exceed actual and potential revenues. There is no reason to believe that going over them again will lead to anyone coming up with cost savings or revenue increases of the magnitude required for NSR to serve the Line or either segment of it without incurring significant losses.[12]

Finally, as also stated in the petition, NSR has identified transload opportunities and trucking companies that are available to provide transportation service for the type of commodities received by SMI. Indeed, NSR's traffic exhibit shows only inbound movements and thus indicates SMI's outbound products must be hauled by truck. Thus, NSR has anticipated in its petition, and has not saved for rebuttal, facts and arguments concerning additional traffic, possible cost reductions or efforts to retain the traffic, even segmentation of the line so that partial abandonment scenarios are shown to be infeasible as well as feasible specialized alternative transportation options for the two shippers on the line.

All of the foregoing information and the arguments and conclusions to be drawn from it are contained in and supported by NSR's petition. However, it would be unfair and prejudicial to NSR for the petition to be evaluated in light of SMI's opposition statement if the errors, mis-statements and ambiguities in that statement are left uncorrected, cases that differ significantly from the one under consideration in several key respects are unexplained and a statement that does not present evidence and argument sufficient meet the criteria for the requested relief in those cases in any event is left unrebutted.

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[12]This is perhaps a smaller point than whether the total volume of the traffic could increase significantly but we doubt SMI would actually want to have cars sit in the yard and to have deliveries of its material weekly or even less frequently if it needed the material for the continuous operation of its facility. The cars no doubt arrive at regular intervals for a reason.

NSR does not introduce new evidence here but merely corrects or refutes erroneous statements or conclusions or ambiguities in SMI's statement that would be clearly prejudicial to NSR if left uncorrected or unrebutted. NSR presented a detailed petition showing a clear case, not a close or marginal one. Our revenue and cost evidence is detailed, in three different scenarios are in no way marginal. We have shown efforts to continue service and identified transportation alternatives in the petition. We have submitted our response to SMI very promptly.

It is clear in this case that revenue from local traffic is minimal compared to the cost of operating the line, much less compared to the total economic costs to the railroad when bridge rehabilitation costs and opportunity costs are included. NSR should not be required to re-file this case based on largely erroneous and speculative assertions of a large company that simply desires to have cheaper transportation costs for an additional period of time at the expense of the railroad, and at the expense of the negotiation and likely implementation of DCR's plan for trail use for the right-of-way. DCR has already received legislative authority and appropriations to acquire the right-of-way and undue delay in negotiating for trail use of the Line cannot be justified on the basis of SMI's presentation.

For these reasons, NSR requests that the Board accept this letter into the record and into consideration in this case, deny the relief requested by SMI and grant the petition for exemption.

Very truly yours,

James R. Paschall

cc via e-mail and mail:
Thomas F. McFarland
Thomas F. McFarland, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1112
Attorney for SMI Rebar - Farmville

cc:
Farmers Cooperative, Inc.
312 West 3rd Street
Farmville, VA 23901

cc:
Karen J. Rae, Director
Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P. O. Box 590
Richmond, VA 23218-0590

Joseph H. Maroon, Director
Virginia Department of Conservation and Recreation
203 Governor Street, Suite 302
Richmond, VA 23219-2010

Theodore V. Morrison Jr., Chairman
Virginia State Corporation Commission
1300 East Main Street
P.O. Box 1197
Richmond, VA 23218-1197

United States Department of Defense
Military Traffic Management Command (MTMCTEA)
Transportation Engineering Agency
Railroads for National Defense Program
720 Thimble Shoals, Blvd., Suite 130
Newport News, VA 23606-2574

Mr. Tom Ross, Chief of National Recreation and Trails
U. S. Department of the Interior - National Park Service
Recreation Resources Assistance Division
P.O. Box 37127
Washington, D.C., 20013-7127

U. S. Department of Agriculture,
Chief of the Forest Service
4th Floor N.W., Auditors' Building
14th Street and Independence Avenue, S.W.
Washington, D.C. 20250